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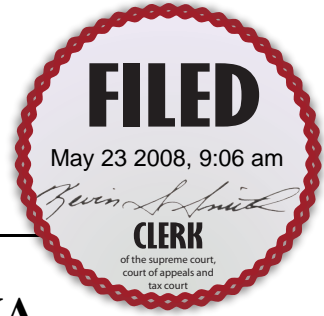
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**IN THE  
COURT OF APPEALS OF INDIANA**

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In the Matter of the Involuntary Termination     )  
of the Parent-Child Relationship of S.F. and S.J.,) )  
Minor Children and Their Father, Stephen J.,     )

STEPHEN J.,     )

Appellant-Respondent,     )

vs.     )

TIPPECANOE COUNTY DEPARTMENT OF )  
CHILD SERVICES,     )

Appellee-Petitioner,     )

No. 79A02-0711-JV-938

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Loretta H. Rush, Judge  
Cause No. 79D03-0706-JT-127 and 79D03-0706-JT-129

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**May 23, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Stephen Johnson, Sr. (“Father”) appeals the involuntary termination of the parent-child relationship with his daughter, S.F., and son, S.J. (collectively, “the Children”), raising the following restated issue: whether the Tippecanoe County Department of Child Services (“DCS”) presented clear and convincing evidence to support the termination of Father’s parental rights as to the Children.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Father and Jeanna Fisher (“Mother”)<sup>1</sup> are the parents of S.F., born July 7, 2001, and S.J., born September 19, 2004. Father and Mother met while they were both in a residential facility, Soldiers and Sailors Children’s Home, where Mother became pregnant with S.F.

Father has a history of a volatile relationship with Mother. Father was convicted of domestic battery in 2004 for battering Mother and breaking her car window. In 2005, there was an incident where Father and Mother got into an argument, and Father collided into Mother’s car while the Children were present in Mother’s car. Father also has a criminal history and a history of drug use. Father started using marijuana at age fifteen and has, among others, two convictions for possession of marijuana. Once Father finished serving probation as part of one of his possession of marijuana convictions in June 2006, he started smoking marijuana again.

DCS had initial contact with Father and Mother in mid-June 2006 following a

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<sup>1</sup> Mother’s parental rights were also terminated; however, she has not filed an appeal.

report alleging that Father and Mother had been using drugs and that Father had inappropriately disciplined one-year old S.J. When a DCS worker went to Father and Mother's home, both parents admitted that they had recently used marijuana. A urine test was conducted on Father, and that test confirmed that he had used marijuana.

Approximately two weeks later, on June 29, 2006, Mother, who was home alone with the Children, took an excessive dose of an anti-anxiety medication. Mother became impaired and unable to care for the Children, and the police were called to the home. Mother had to be hospitalized, and the police tried to contact Father but were unable to reach him. Father, who was out at a bar with friends, later reported that he purposely avoided answering the phone because he was trying to avoid Mother. The Children were removed from the home and placed in foster care with their maternal grandmother, Patty Frey ("Grandmother").

In July 2006, the DCS filed a petition alleging that the Children were children in need of services ("CHINS") due the parents' inability or failure to provide the Children with necessary care and safe supervision. During the initial CHINS hearing, Father denied that the Children were CHINS. Following a fact-finding hearing, the trial court determined that the Children were CHINS and that they should remain in foster care with Grandmother. In September 2006, the trial court issued a parental participation decree and ordered Father to, among other things, visit the Children on a regular basis; participate in individual and family counseling; complete a drug rehabilitation program and follow all recommendations; submit to random drug screens; remain drug free; complete and follow all recommendations of a chemical dependence assessment at

Alpine Clinic; maintain stable employment and appropriate independent housing; and pay \$25 per week in child support for the relative foster care placement.

Father initially resisted participating in services and missed numerous visitations with the Children. For example, from June 2006 to October 2006, Father missed twenty-five of thirty-eight scheduled visits with the Children. During an October 2006 case conference, DCS told Father that visits, which had previously been held in Lafayette, would start to occur in Monticello—where the Children resided with Grandmother—in an effort to minimize the travel hardship on the Children and their time away from home. Despite the fact that DCS was going to transport Father from Lafayette for the visits, Father told DCS that he would not attend visits in Monticello because it was not convenient for him.

In October 2006, DCS filed a petition to show cause against Father, alleging that he had failed to pay the court-ordered child support, failed to participate in visits, and failed to comply with drug screens. The trial court held a show cause and review hearing. Upon Father's concession, the trial court found Father in contempt and ordered a period of suspended incarceration.<sup>2</sup> As part of its review order, the trial court ordered Father to participate in visitation with the Children at the level recommended by the treatment team, participate in an intensive outpatient program ("IOP") and an aftercare group through Alpine Clinic, submit to random drug screens, and pay child support as ordered.

When Father did attend visits with the Children, the visits went well, and he

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<sup>2</sup> DCS also filed a petition to show cause against Mother, and the trial court also found Mother in contempt upon Mother's concession.

interacted affectionately with them and was able to demonstrate positive parenting skills. In December 2006, Father and Mother were able to get weekend semi-supervised home visits with the Children. However, this progress was not long lived. In February 2007, a scheduled weekend visit was suspended due to an allegation of domestic abuse between Father and Mother. Specifically, there was a report that Father had hit Mother in the lip, causing it to split. In March 2007, DCS arranged for the Children to have a weeklong visit with Father and Mother. When Mother got ill, Father failed to watch the Children, and Mother sent the Children back to stay with Grandmother.

By April 2007, Father and Mother lost their home visit privilege and were returned to fully supervised visitations following a domestic violence incident between Father and Mother. Specifically, in April 2007, Mother and her friend, Megan Barrett, confronted Father about allegations that Father was having an affair. Father pushed Mother and punched her in the face multiple times. When Barrett informed Father that she was calling the police, Father took Barrett's cell phone, broke it, and punched her in the head. Father was charged with criminal mischief and interference with the reporting of a crime.

Father's violent behavior continued. In May 2007, police responded to a report that Father was threatening people with a "shank"—i.e., a large piece of wood with a sharp piece of metal hidden inside—and, after arriving at the scene, found that Father had bloodshot eyes and a strong odor of alcohol emanating from his breath and person. *Appellant's App.* at 68. The initial report to police indicated that Father had hit Mother and had pushed another woman down by her throat. Neither female was willing to press charges, and the police arrested Father for public intoxication. Father later pleaded guilty

to public intoxication as a Class B misdemeanor.

In May 2007, DCS filed another petition to show cause against Father, alleging that Father had failed to complete drug screens, failed to pay child support, and failed to attend some court-ordered therapy sessions. DCS asked that Father be sentenced to jail for the number of days for each appointment or drug screen Father missed. Following a hearing, the trial court ordered Father to serve thirty days in jail.<sup>3</sup> The trial court ordered Father to serve his jail time in a work release program, but Father refused to enter the program and remained in jail.

By June 2007, Father's participation in services continued to decline, and he continued to miss visits with the Children. For example, from April 2007 to August 2007, Father only visited the Children three times out of a possible nineteen times. In May 2007, Father and Mother arranged to have a three-hour visit with the Children at Indiana Beach, but the parents were almost two hours late and brought another couple with them. Father also failed to report for a drug screen and stopped attending court-ordered couples therapy.

On June 18, 2007, DCS filed petitions to terminate Father's parental rights to the Children. The trial court held a hearing on DCS's petition in August 2007. During the hearing, Georgia Hahn, the case manager and visitation supervisor through Wabash Valley Hospital, acknowledged that Father had good parenting skills but stated that Father had a problem with follow through. Hahn testified that from October 2006 until

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<sup>3</sup> DCS also filed a petition to show cause against Mother, and the trial court ordered her to serve six days in jail.

the time of the termination hearing, there were fifteen visits where the Children were waiting and Father failed to come. Hahn testified that Father's willingness to participate in services declined in February 2007 and corresponded to a deterioration in Father and Mother's relationship. At that time, Mother had confided to Hahn about an incident where Father hit Mother during a skirmish when Father accused Mother of being unfaithful and tried to pull down her pants to see if she was wearing underwear. Thereafter, Father's attendance at couple therapy sessions and case management sessions declined. Hahn stated that if she had to grade Father's overall participation, she would give him a D. Hahn opined that, based on her observation of the parents' performance of services and interactions at visitations, the conditions that led to the Children's removal would not be remedied, and she testified that she did not think the parents could provide a safe and stable home for the Children.

Katherine Holmes, the DCS family case manager, testified that after the trial court imposed sanctions on Father as part of the show cause hearings, DCS did not see improvement in Father's compliance with services. Holmes testified that Father had not kept her informed of his employment or living circumstances and had no contact with her since June 2007. Holmes testified that, based in part on Father's refusal to continue services and to address some of underlying issues that led to the Children's removal, she did not believe that there was a reasonable probability that the conditions that led to the Children's removal would be remedied. Holmes also testified that termination of Father's parental rights was in the Children's best interests.

Ruth Wukasch, the court-appointed special advocate ("CASA") who had a Ph.D.

in psychiatric nursing, testified that it was in the Children's best interests to terminate Father's parental rights. The CASA testified that Father and Mother had six years of a dysfunctional relationship where the Children would get caught in the middle. One of the CASA's reports to the trial court showed that S.F. had reported that her parents yelled at each other a lot, and the CASA testified that she was concerned about the Children seeing domestic violence. The CASA stated that she believed that Father had the capacity—but not the will—to take care of the Children and that she did not think that he put the Children first. The CASA testified that she was concerned about the negative effects on the Children from being dragged around for visitation and then having Father not show up or not fully participate. The CASA testified that the Children needed a stable home environment.

Jeffrey Vanderwater-Piercy, a clinical psychologist who conducted a psychological assessment of Father, testified that he had given Father a provisional diagnosis of anti-social personality disorder based on Father's pattern of unlawful behavior, aggressive behavior, and irresponsible behavior. Vanderwater-Piercy testified that Father and Mother's relationship over the prior six years was an "unstable and somewhat volatile relationship marked by separations and incidents of domestic violence[.]" and he expressed doubt over Father and Mother's ability to have a successful, stable relationship. *Tr.* at 71. He noted some ambivalence on Father's part because it appeared that Father wanted to commit to Mother and the Children, yet, at the same time, Father indicated that there were times that he needed to be on his own.

During the hearing, Father admitted his criminal history and pending criminal



charge for the incident where he took and broke Barrett's phone. Father testified that he had a suspended license and a pending charge for driving while suspended but stated that he still drove despite that fact. Father also admitted that he stopped participating in some of the court-ordered services. Father testified that he quit attending visits with the Children when the visits got moved back to Grandmother's house because he did not feel comfortable there. He acknowledged that the visits had been moved to Wabash Valley Hospital in an effort to remedy that issue but stated that he had not attended any visits since they had been moved. Father testified that he quit attending his IOP aftercare sessions because he felt they were "pointless" and acknowledged that he did so despite the trial court's order to attend these sessions. *Id.* at 180. Father also testified that he quit couples therapy because the therapist was asking him questions about the past that upset him. Father also admitted that he did not stay at the house the entire time when the Children were allowed to come for weekend visits, and he stated that he would leave the house and not return until 3:00 or 4:00 a.m.

Following the termination hearing, the trial court issued an order terminating Father's parental rights to the Children. In support of its order, the trial court found, in part, that Father and Mother "are unable to put the needs of their children above their own volatile relationship" and that they "have been unable to maintain compliance with court orders leading to reunification for only short periods of time before they fall back into their previous patterns of behavior." *Appellant's App.* at 551. The trial court also acknowledged that "[b]oth parents love their children" but found that the conditions that led to the Children's removal would not be remedied because "neither parent has

demonstrated the ability or willingness to make lasting changes from their past behaviors and establish a safe and stable home for their children.” *Id.* at 552. The trial court also found that Father had shown that he did “not have the desire to utilize services to learn skills necessary to help nurture and protect [the Children]” and had “not been able to make decisions in the children’s best interest.” *Id.* Father now appeals.

### ***DISCUSSION AND DECISION***

The purpose of terminating parental rights is to protect children, not to punish parents. *In re D.L.*, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), *trans. denied*. Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*.

The trial court supported its order terminating the parental relationship between Father and the Children with specific findings and conclusions.<sup>4</sup> Thus, we engage in a two-tiered standard of review: first, we determine whether the evidence supports the findings; second, we decide whether the findings support the judgment. *In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002). We will not set aside the specific findings unless they are shown to be clearly erroneous. *Id.* A finding is clearly erroneous only when there are no facts or reasonable inferences in the record supporting it. *Id.* In reviewing the record, we consider only the evidence and inferences favorable to the trial court’s decision, without reweighing evidence and without judging witness credibility. *Id.*

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<sup>4</sup> We commend the trial court for its thorough findings and conclusions entered in support of its decision to terminate Father’s parental rights.

Father argues that DCS failed to present sufficient evidence to support the termination of his parental rights. IC 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- \* \* \* \* \*
- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re S.M.*, 840 N.E.2d 865, 868 (Ind. Ct. App. 2006).

Father first argues that the trial court erred by finding that the continuation of the parent-child relationship would pose a threat to the well-being of the Children. *See Appellant's Br.* at 15, 19-20. As note above, IC 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) the conditions that resulted in the Children's removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the Children. The trial court specifically

found that DCS had proved both of these allegations in subsection (b)(2)(B) by clear and convincing evidence. Father, however, challenges only the trial court's finding that the continuation of the parent-child relationship would pose a threat to the Children's well-being. Because Father does not challenge the sufficiency of the evidence to support the trial court's finding that there was a reasonable probability that the conditions that resulted in the Children's removal would not be remedied—and more importantly, because the record before us reveals that sufficient evidence existed to support that finding—we need not review whether the trial court's finding that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Children is clearly erroneous.

Father also argues that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of the Children. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Testimony of the DCS caseworker and the CASA has been found to be sufficient to support the trial court's conclusion that termination was in the best interests of the child. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003); *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Here, the totality of the evidence demonstrated that the termination of Father's parental rights was in the Children's best interests. The evidence most favorable to the judgment showed that Father had a history of a volatile relationship with Mother that

touched and affected the Children's lives. Indeed, Father's violent tendencies and acts of violence toward Mother continued during the CHINS case. Although the record indicates that Father loves the Children and initially partook in some of the court-ordered services, testimony from case providers reveals that Father was unwilling to make a lasting commitment to participate in visitation and the necessary services in order to provide a stable home for the Children and to work toward a permanent reunification with the Children. Furthermore, both the DCS caseworker and the CASA testified that termination of Father's parental rights was in the Children's best interests. *See Tr.* at 223, 246.

Based on the record before us, sufficient evidence existed to support the trial court's finding that termination of Father's parental rights was in the Children's best interests. We reverse a termination of parental rights "only upon a showing of 'clear error' — that which leaves us with a definite and firm conviction that a mistake has been made." *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the trial court.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.